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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JULIEN L., A Person
Coming Under Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JERROD L. et al.,

Defendants and Appellants.

B300114

(Los Angeles County
Super. Ct. No. 19CCJP03626A)

APPEAL from orders of the Superior Court of Los
Angeles County, Stephen C. Marpet, Commissioner.
Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant Jerrod L.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant J.M.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In August 2019, the juvenile court found by clear and convincing evidence that releasing minor Julien L. (born June 2013) to his parents (father Jerrod L. and mother J.M.) would pose a substantial danger to Julien's physical and mental well-being. It further found there were no reasonable means to protect Julien short of removal. Consequently, the court issued a dispositional order removing Julien from Jerrod and J.M. Jerrod and J.M. contend the court erred because substantial evidence supports neither of the court's findings, and the court could have safely released Julien to Jerrod under the supervision of the Department of Children and Family Service (DCFS), with an order that they participate in family maintenance services. Because there is substantial evidence of: (a) ongoing domestic abuse between Jerrod and J.M. carried out in Julien's presence, (b) the parents' willful disobedience of court orders, and (c) the parents' refusal to cooperate with

DCFS, we find no error in the court's dispositional order and affirm.

STATEMENT OF RELEVANT FACTS

A. *Previous DCFS Referrals*

Before the referral that precipitated the events of this case, DCFS received four other referrals regarding the family:

In December 2016, DCFS received a referral alleging emotional abuse and general neglect of Julien, as the family was living in a house without heat or electricity, and with broken windows. It was also reported the parents “frequently ‘beat the heck out of each other,’” sometimes when Julien was present. J.M. admitted she and Jerrod “had some issues,” but claimed none related to Julien’s safety or well-being, and denied any domestic violence. Jerrod also denied any domestic violence. The allegations were deemed inconclusive.

In August 2017, DCFS received a referral alleging emotional abuse of Julien after Jerrod grabbed J.M. by her shoulders and dragged her to the car. The reporting party then heard a loud slap and J.M. saying not to hit her again. The reporting party alleged J.M. had a bloody nose, but both parents denied fighting. It was alleged that Julien was in the backseat when this occurred. Jerrod was arrested over this incident, but J.M. declined an emergency protective

order.¹ Julien denied witnessing any physical abuse, though he reported that the parents argued “on a regular basis.” The allegations were deemed inconclusive.

In March 2018, DCFS received a referral alleging general neglect of Julien based on J.M.’s “heavily using weed and hard drugs.” It was also reported that there was domestic violence between the parents. The referral was “evaluated out.”

In October 2018, DCFS received a referral alleging emotional abuse after J.M. punched Jerrod in the nose while Jerrod was holding Julien (Julien was unharmed). Julien, then five, denied seeing J.M. punch Jerrod but did state Jerrod had a bloody nose; Jerrod claimed he had hurt himself. Jerrod stated that J.M. had only “flicked him on the nose” after he insulted her cooking but it was “not a big deal” and he was not bleeding from it. J.M. also denied hitting Jerrod. However, the reporting party stated the morning after the incident, “they found blood all over the building’s stairs and outside of the building.” The allegations were deemed inconclusive.

¹ Jerrod was charged with spousal battery to which he pled no contest, resulting in three years of probation. He was also ordered to stay away from J.M. and complete a domestic violence program. In March 2018, he was arrested for violating the protective order. In October 2018, the protective order was modified to permit peaceful contact with J.M. Jerrod completed a domestic violence program but is on probation until August 2020.

In a July 2019 jurisdiction/disposition report, DCFS noted that four out of five referrals (the four referenced above, and the one discussed below) were made by “mandated reporters who would not benefit from the family being involved with DCFS.”

B. *The Referral That Occasioned the Petition*

On April 4, 2019, DCFS received a referral alleging emotional abuse of Julien, based on arguments between his parents on April 3, “which included ‘verbal and physical abuse.’” No one saw anything, but “it was reported that ‘broken glass’ was heard and the mother was heard saying ‘Ouch!’” Law enforcement was summoned, but no arrests were made. The family was living at an Upward Bound House facility, where they had been since October 2018.²

The next day, Children’s Social Worker (CSW) Nancy Tran spoke with the Upward Bound program manager, Chris Oliver, who stated that multiple neighbors had heard the parents arguing, and that there had been previous domestic violence incidents.

On April 9, 2019, the Upward Bound on-site residential manager informed CSW Tran that law enforcement had

² According to its website, “[t]he mission of Upward Bound House (UBH) is to eliminate homelessness among families with children in Los Angeles by providing housing, supportive services, and advocacy.” (Upward Bound House, *Our Mission* <<https://upwardboundhouse.org/about-us/our-mission/>> [as of July 13, 2020].)

been called on April 7, 2019, due to arguing in the family's residential unit, and four residential units had informed her that they heard fighting "constantly" from the parents' unit.

On April 15, 2019, Tran was able to visit the family's home (a previous attempt to visit on April 9 had been unsuccessful because no one answered her knock), and separately interviewed J.M., Jerrod, and Julien. Regarding the allegations of fighting on April 7, J.M. stated the family was being harassed, and opined that her neighbors -- who she claimed were being asked to leave Upward Bound -- were the ones calling DCFS. J.M. admitted to arguing with Jerrod, but denied any physical abuse. Regarding the April 3 incident alleged in the referral, J.M. denied fighting with Jerrod that day, denied any broken glass, and denied any domestic violence occurred at all. J.M. denied other reported incidents as well, opining that her neighbors were trying to get her in trouble because J.M. had reported their drug use to Upward Bound staff. She also stated her belief that Upward Bound staff disliked her. J.M. said that things were "okay at home," that she had started a cleaning business a few weeks ago, and that Julien was healthy and had no medical issues. J.M. denied any substance abuse, mental illness, arrests, or domestic violence, though she admitted that Jerrod was arrested two years ago.

Jerrod also denied any domestic violence occurred on April 3, stating he had worked for Postmates that day. Regarding April 7, he stated he had argued with J.M., but denied any physical abuse. Jerrod admitted he previously

spent nine years in prison for burglary, and that he was arrested in 2017 for domestic violence, but denied that domestic violence had actually occurred.

Julien was well groomed, dressed appropriately, and appeared developmentally age appropriate. He had no marks or bruises that would suggest abuse or neglect. Julien stated he felt safe in his home, but related several incidents of mutual domestic abuse between his parents (it was unclear whether he was describing one incident or several incidents). Julien described Jerrod hitting J.M. on the leg, J.M. pushing Jerrod, Jerrod “hitting himself,” Jerrod having a bloody nose, J.M. accidentally stabbing Jerrod in the back with a butter knife, J.M. throwing rocks at Jerrod’s car, and the parents punching each other. When asked about these incidents, both parents denied they occurred and J.M. stated Julien tended to invent stories when nervous.

On May 19, 2019, CSW Oganessian spoke with an Upward Bound resident who stated the family fought “a lot” -- though the fighting was “sporadic” -- and that sometimes Julien was present during the fighting. This resident reported hearing breaking glass and “something against the wall,” but reported no concerns for Julien, only that fights in his presence were inappropriate.

On June 3, 2019, the juvenile court issued a removal order at DCFS’s request, which two CSWs and two police officers attempted to serve on June 5. J.M. would not let anyone into the unit, claiming both she and Julien needed to get dressed. Though their unit was located on the second

floor, approximately 15 feet from the ground, Jerrod and Julien then proceeded to jump out of the window, unbeknownst to the waiting CSWs and police officers. J.M. later stated she wanted to speak with the police officers' sergeant. While waiting for the sergeant to arrive, J.M. went into the bedroom, ostensibly to change. When the sergeant arrived and the officers went into the unit, they discovered it was empty. From reviewing Upward Bound security camera footage, it was discovered that Jerrod and Julien had jumped from the window and J.M. had followed approximately 10 minutes later. Later that day, CSW Tran received a call from Jerrod's mother, stating she could bring Julien to DCFS. Julien was detained and placed with his paternal aunt. Two days later, DCFS filed a petition alleging one count (count a-1) under Welfare and Institutions Code section 300, subdivision (a) (Section 300(a)) and two counts (counts b-1 and b-2) under subdivision (b)(1) (Section 300(b)(1)).

Counts a-1 and b-1 identically alleged that "Julien . . . L[]'s mother, J[M.] . . . , and the child's father, Jerrod . . . , have a history of engaging in violent altercations. On a prior occasion, the father struck the mother's leg. The father and mother struck each other with the mother and father's fists. The mother pushed the father and brandished a knife at the father and placed the knife on the father's back, and stabbed the father's back. The mother threw rocks at the father's vehicle. The violent altercation occurred in the presence of the child. The father violated a restraining order by failing

to maintain peaceful contact with the mother. The father has a criminal history including a conviction for Domestic Battery. Such violent conduct by the child's mother and father endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger."

Count b-2 alleged that "On 06/05/2019, the child Juli[e]n . . . L[]'s mother, J[M.] . . . , and the child's father, Jerrod . . . , placed the child in a detrimental and endangering situation, in that the mother and father caused the child to jump out of a second story window, approximately 15' high, with the father, in order to prevent DCFS from removing the child from the parent's [sic] home and care. The mother later also jumped out of the second story window. Such a detrimental and endangering situation established for the child by the mother and father endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger."

The parents denied the petition, and the court found a prima facie case for detaining Julien. The court ordered Julien to be placed with a relative under DCFS's supervision, and ordered reunification services to be provided to the parents.

C. DCFS Continues Its Investigation

In July 2019, Dependency Investigator (DI) Mercedes Mendoza separately interviewed J.M., Jerrod, and Chris

Oliver, the Upward Bound program manager. J.M. again denied all allegations of domestic violence, and claimed she and Jerrod had never had a physical altercation. Regarding Jerrod's conviction for spousal battery, J.M. claimed Jerrod accepted a plea deal so he could reunite with her and Julien. J.M. reiterated the other residents at Upward Bound were making false allegations because they were jealous of her, and that the only trustworthy staff member was Chris Oliver. She accused CSW Tran of inventing the statements attributed to Julien that Tran had put in the DCFS report, opining that Tran wanted to "steal Julien." When asked about Jerrod and Julien jumping out of the window, J.M. professed ignorance, stating that while she herself jumped out of the window, for all she knew, Jerrod and Julien were hiding under the bed. J.M. was not enrolled in any services or classes.

Jerrod also felt the other Upward Bound residents were trying to "sabotage them," and did not believe Julien had made the statements Tran reported. Jerrod confirmed he had pled no contest to the battery charge so he could return to his family -- he denied any domestic violence occurred. He admitted he never stayed away from J.M. though ordered to do so. As to jumping out of the window, he stated he wished he had not done that, but when the police and DCFS arrived to remove Julien, "the thought of Julien sitting in the back of a patrol car scared him." Jerrod stated he jumped first, then had Julien sit at the edge of the sill and jump into his arms. Jerrod claimed Julien had

jumped from similar heights on the playground. Jerrod contradicted J.M.'s professed ignorance regarding their self-defenestration, telling Mendoza, "she knew." Jerrod said he was not currently enrolled in any services, but intended to start a parenting class, and was willing to do what was required to reunify with Julien.

Chris Oliver stated the family had significantly improved since May 2019, and they were working consistently and had developed an understanding of the program. He stated the arguing had decreased and expressed surprise at Julien's removal. Regarding the incident in October 2018 where J.M. punched Jerrod in the nose while he was holding Julien, Oliver stated J.M. hit Jerrod's nose with a closed fist, after which Jerrod put Julien down. Oliver also stated that though the security video does not show Jerrod having a bloody nose, he believed Jerrod sustained one because there was blood in the floor area where the altercation had taken place, which had not been there before. Oliver reported other incidents in which J.M. had kicked a door and verbally lashed out at Upward Bound staff. Oliver also stated that if Julien was not returned to at least one parent, they would lose their opportunity for permanent housing under the program they were using.

D. *The Court Places Julien with Jerrod on an "Extended Visit"*

On July 10, 2019, DCFS submitted a last minute information agreeing that Julien could be released to Jerrod

on the conditions that J.M. move out and that Jerrod agree to unannounced DCFS visits. The court followed DCFS's recommendation and placed Julien with Jerrod on an "extended visit." The court also ordered that J.M. was to have monitored visits, but that Jerrod was not to be the monitor without DCFS approval. The court specifically informed the parents that "the social worker will also be making unannounced home visits just to verify mom is not around" and cautioned them not to "jeopardize the placement by [J.M.'s] coming over there and having dinner or something or that just could be disastrous because the child will be detained." Both parents nodded their heads in response. The court also asked the parents whether they were "in programs"; Jerrod responded "yes," and J.M. stated she "will be." The court informed them, "the earlier you get in the quicker you'll get your child back."³

Two days later, CSW Lee met with Jerrod, provided him with a copy of the court's minute order, and reviewed it with him. She reiterated that DCFS would be conducting unannounced home visits, and that he could not monitor J.M.'s visits with Jerrod. Jerrod stated he understood. Lee also informed Jerrod about a pending appointment with a Multidisciplinary Assessment Team (MAT) Assessor. In a separate meeting on July 15, Lee also reiterated to J.M. that

³ After this exchange, J.M.'s counsel requested the court provide her "transportation assistance," which the court ordered for both parents. J.M. did not request "housing assistance."

Jerrod could not monitor her visits, and that she could not be in the family home.

E. *The Family Disobeys Court Orders and Refuses to Cooperate with DCFS*

On July 24, 2019, CSW Angela Lee texted J.M. to set up a meeting, telling J.M. that she had a bus pass ready for her, and also asking where she was currently staying. J.M. responded that she could meet with Lee at her office, and that “[a]t the moment, I’m staying with a friend.”

The next day, DCFS received an e-mail from Chris Oliver, which read in part: “I am emailing you because the on-site manager at our shelter notified me that J[.]M[] has been staying at the shelter while Jerrod and Julian [*sic*] were there. This happened the evening of 7/21/19 & 7/24/19.” An on-site manager later reported that J.M. waited outside the shelter, then entered, wearing a hoodie.

On July 26, 2019, the MAT assessor went to the family’s home for a scheduled appointment, but no one was there. On July 30, 2019, J.M. did not show up to her scheduled appointment with CSW Lee. J.M. later confirmed she knew they had an appointment, but stated she was unable to make it.

On August 1, 2019, DCFS filed an ex parte application to remove Julien from Jerrod because J.M. had been staying at the shelter. DCFS also noted Jerrod “had not been making himself regularly available to the DCFS and missed the MAT meeting assessment.” At the hearing, J.M.’s

counsel stated the parents had believed J.M. “was allowed to shower in the home” and Jerrod’s counsel stated the parents thought she could “sleep underground in a car [in the parking structure].” While the court initially stated its intention to remove Julien, the court changed its mind and, over objections by DCFS’s and Julien’s counsel, decided to permit Julien to continue having an “extended visit” with Jerrod.

On August 2, 2019, in response to CSW Lee’s request for an update, DCFS received an e-mail from Claudia Mendoza from Upward Bound, stating in part: “The only day they have slept at the facility as of now this week was on Thursday 8/1/2019 when they came in at 1:09a.m [*sic*] father and child only.”

On August 5, 2019, the MAT assessor again visited the home. Jerrod was not very welcoming, and informed the assessor she could meet with Julien for only an hour, as Jerrod needed to go to work. Julien told the MAT assessor that Jerrod and J.M. argued and, though this did not scare him, he wished they would be friends. After one hour, Jerrod interrupted and took Julien, stating he needed to go to work. The MAT assessor then sat in her car for 15 minutes, getting organized for her next appointment, and did not see any cars emerging from the Upward Bound parking structure.⁴

⁴ There is no evidence in the record to indicate what means of transportation Jerrod typically used to get to work.

The next day, DI Mendoza called and texted the parents, asking them to call her to set up a meeting.⁵ Jerrod responded immediately, but left no voicemail when Mendoza was unable to answer the call. Mendoza returned the call, and they arranged to speak at 4:00 p.m. that day. But Mendoza did not call Jerrod until 5:08 p.m. Later that night, she texted both parents that DCFS needed to meet with them to discuss the family situation. The next day, Jerrod returned the text stating: “Hello good afternoon Mercedes and really another meeting? i thought we addressed it last time basically this all sucks for our family nothing is officially true and it’s allegedly told that we argue all day from our neighbors from a shelter that we no longer talk to the allegations aren’t true and since then it’s been nothing but hard I really don’t want a whole nother meeting to talk about a bad time it really doesn’t make me feel good or happy but I continue to remain positive for my son and my family so again it’s not the best time only because my son is at home with me is it bare able.” (*Sic.*)

Mendoza called Jerrod and, among other things, explained that the purpose of the previous meetings was to interview the family for DCFS reports, but DCFS wanted to work with the family and make them part of the

⁵ Mendoza volunteered to contact Jerrod because, in a meeting between DCFS personnel regarding the case, CSW Lee had stated the parents were unresponsive to her efforts to contact them, and Mendoza stated she had not encountered difficulties in getting a response.

decision-making process. Jerrod responded that “he was not going to participate in any meetings, he did not want to deal with DCFS, [and] he d[id] not want anyone from DCFS speaking with Julien, [because] ‘he gets traumatized every time you guys come to see him and ask him questions, he thinks he is going to be taken away.’” Jerrod “added that there is no reason for DCFS involvement” and that “the entire situation is due to neighbors making false reports and the staff at Upward Bound not liking the family.” Mendoza asked Jerrod to consult with his attorney about participating in a CFT (Child and Family Team) meeting, emphasizing that it was important that the relationship between DCFS and the family be repaired. Jerrod “responded that he would speak with his attorney today and that he would call her upon completion of the telephone call.” As of August 9, 2019, Jerrod had not called Mendoza back, and nothing in the record suggests he ever did so. DCFS informed the court of these events through a last minute information.

F. *The Court Removes Julien From the Parents*

On August 13, 2019, the court held a jurisdictional hearing. DCFS moved several of its reports and its August 2, 2019 ex parte petition into evidence. No other evidence was received, and no witnesses testified. The court then entertained argument. DCFS’s counsel asked the court to sustain the petition as pled. Julien’s counsel asked the court

to sustain counts b-1 and b-2, with no mention of count a-1.⁶ Jerrod's counsel asked the court to dismiss the a-1 and b-1 counts because there was no substantial evidence the domestic violence was ongoing or likely to continue, and to dismiss the b-2 count because it was a single incident about which Jerrod had been "extremely remorseful" and representing that "if he could do things over he would not do that." J.M.'s counsel joined the arguments of Jerrod's counsel and added that the evidence showed the family had improved significantly.⁷ On rebuttal, DCFS's counsel argued

⁶ As detailed above, counts a-1 and b-1 identically alleged Julien to be a dependent under Section 300(a) and Section 300(b)(1) due to the parents' ongoing domestic violence, and count b-2 alleged Julien to be a dependent under Section 300(b)(1) due to the incident in which he and Jerrod jumped out of a second-story window.

⁷ The court also discussed with J.M.'s counsel the ongoing domestic violence, and the parents' disobedience of its previous orders. Specifically, when counsel argued the domestic violence allegations were vague and without evidentiary support, the court responded (presumably reading from a DCFS report admitted into evidence): "Father hitting mother on the leg. Father punching mother. Father having a bloody nose. Mother putting a knife to father's back. Mother throwing rocks at father's car. Parents punching each other. Those are all statements made by a five-year-old child living in this house since it's [*sic*] born with a family that's gotten referrals for domestic violence stemming back to 2016, '17, '18 and an arrest in '17. . . . I can't ignore this history of this child living in this situation." Additionally, after J.M.'s counsel argued that the parents had been "taking every step to follow this court's order," (*Fn. is continued on the next page.*)

the domestic violence was ongoing. The court sustained all three counts in the petition.

The court then held the dispositional hearing. DCFS's counsel argued the court should remove Julien because of the parents' ongoing domestic violence and willful disobedience of previous court orders. Julien's counsel asked the court to return him to Jerrod, arguing that safety measures could be put in place to protect Julien, that Jerrod would not do something as rash as having Julien jump out of a window again, and that the parents would cooperate with DCFS.⁸ Jerrod's counsel also asked the court to release Julien to Jerrod's custody, arguing that Jerrod was cooperating and would continue to cooperate with DCFS, and there were reasonable means to keep Julien with Jerrod.⁹ J.M.'s counsel joined that argument and

the court interjected: "Following the court's orders? The one about not allowing mother to even be in that location after I detained the child from her and she ended up going back a number of times? [T]hat's following the orders? That's not following the orders."

⁸ Julien's counsel also suggested during her argument that her office could send out investigators unannounced to Upward Bound as a way of ensuring compliance with the court's orders. The court responded by asking how the investigators could help if Jerrod would not let them in, or if the family was not at Upward Bound when they came. Julien's counsel did not answer the court's question.

⁹ The court also discussed the parents' willful disobedience of its orders with both Julien's and Jerrod's counsel.

additionally pointed out that, after the ex parte hearing, J.M. complied with the court's order to stay away, resulting in her being homeless.¹⁰ In rebuttal, DCFS's counsel again pointed to the ongoing domestic violence, and Jerrod's stated refusal to have further meetings with DCFS.

Based on the evidence presented, the court detained Julien, finding "by clear and convincing evidence there is a substantial danger to the minor's physical and mental well-being" and "there is no reasonable means [*sic*] to protect without removal." Both parents timely appealed the court's jurisdictional and dispositional orders. However, both appellate briefs argue only that the court's dispositional order was incorrect. Because they have either abandoned or forfeited any challenge to the jurisdictional order, we address the dispositional order only. (See *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 726 [failure to raise argument in opening brief constitutes forfeiture].)

DISCUSSION

"A dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence . . . [that t]here is or

¹⁰ As noted, when first directed to leave the residence Jerrod and Julien were sharing, J.M. asked only for transportation assistance. Two weeks later, she reported she was staying with a friend. She did not suggest, prior to the August hearing, that homelessness was an inevitable consequence of abiding by the court's orders.

would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (Welf. & Inst. Code, § 361, subd. (c)(1).) At the dispositional hearing, the court removed Julien from both parents after finding "by clear and convincing evidence there is a substantial danger to the minor's physical and mental well-being. There is no reasonable means to protect without removal."

"On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Under a substantial evidence review, "we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.]" (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560, quoting *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

Both parents contend that substantial evidence does not support either the court's finding that there was a substantial danger to Julien, or its finding that there were no reasonable means to protect Julien without removing him. We disagree.

A. *Substantial Evidence Supports the Court's Finding That There Would Be a Substantial Danger to Julien If Returned to Jerrod*

Several cases hold that ongoing domestic violence that occurs in the presence of a minor is substantial evidence supporting a finding that returning that minor to the parents would constitute a substantial danger to that minor. (See, e.g., *In re F.S.* (2016) 243 Cal.App.4th 799, 812-813 [when four incidents of domestic violence occurred in presence of minor, “the juvenile court assuredly had before it sufficient evidence to establish Mother was unable to provide proper care for [minor] and [minor] would potentially suffer detriment if she remained in Mother’s custody”]; *In re T.V.* (2013) 217 Cal.App.4th 126, 136 [when “the court removed [minor] from [father]’s custody because the evidence showed the parents engaged in a pattern of domestic violence, some of which [minor] heard or saw . . . [a]lthough [minor] had not been physically injured and was otherwise healthy, the court could reasonably find she was at substantial risk of harm as a result of the parents’ ongoing domestic violence and there were no reasonable means by which she could be protected without removal”].) Moreover, as J.M. recognizes in her brief, “[t]he parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.)

In remarks made to J.M.’s counsel during the jurisdictional hearing, the court listed the incidents of

domestic violence that Julien had recounted, and stated it could not ignore this history.¹¹ There was also uncontradicted evidence that Jerrod had pled no contest to spousal battery, and had instructed Julien to jump out of a second-story window to evade DCFS. Both the evidence of ongoing domestic violence and Jerrod's admission that he directed his six-year-old son to jump out of a window constitute substantial evidence supporting the court's finding of substantial danger to Julien if returned to Jerrod's care.

J.M. does not argue that ongoing domestic violence would be insufficient to support the court's findings. Instead, she points to evidence that would support a conclusion that there was no ongoing domestic violence -- previous referrals to DCFS for domestic violence were deemed inconclusive or evaluated out; law enforcement made no arrests for the referral that resulted in the instant petition; and the Upward Bound manager said the family had made a significant improvement. But as J.M. acknowledges in her brief, "the appellate court has no authority to re-weigh the evidence or substitute its judgment for that of the juvenile court." Indeed, our role is to

¹¹ Though these remarks occurred during the jurisdictional hearing, when the court ruled in the dispositional hearing, it incorporated the evidence and findings from the jurisdictional hearing, stating its ruling was "based on the evidence before me" and stating the "parties have all heard my position based on the comments made"

ascertain whether there is substantial evidence to support the court's conclusions. As stated above, there is.

The parents also argue that the family's non-cooperation with DCFS did not endanger Julien. Preliminarily, we note that the ongoing domestic violence on its own sufficiently supports the finding of substantial danger. But in any case, to the extent that the parents prevented DCFS from enforcing the court's orders and checking in on Julien's well-being, the non-cooperation did place Julien in substantial danger.¹²

¹² In his brief, Jerrod cites *In re Basilio T.* (1992) 4 Cal.App.4th 155 for the proposition that "Evidence of domestic violence sufficient to justify dependency jurisdiction does not mean the evidence is sufficient to justify removal of a child from the parent's custody." *Basilio T.* held there was no substantial evidence to support an order to remove minors when the only evidence of danger was "two incidents of domestic violence in which the police were called . . . [which] presumably occurred in or near the minors' presence." (*Id.* at 171.) The instant case involved not just two isolated incidents of domestic violence, but a pattern of mutual abuse spanning several years. Further, not only did much of the mutual abuse "presumably occur[] in or near" Julien's presence, J.M. punched Jerrod in the nose while Jerrod held Julien in his arms. *Basilio T.* is inapposite to the instant situation.

B. *Substantial Evidence Supports the Court's Finding That There Were No Reasonable Means to Protect Julien Without Removal*

While both parents also argue that substantial evidence does not support the court's finding that there were no means short of removal to protect Julien, substantial evidence supports the court's conclusion that the parents were willfully disobeying court orders and not cooperating with DCFS. Given that the parents' only suggestion of alternate means to protect Julien is through court orders and DCFS supervision, substantial evidence supports the court's finding that no means short of removal would protect Julien.

1. *Substantial Evidence Supports the Court's Conclusion That the Parents Willfully Disobeyed Court Orders*

Through discussions with counsel during both the jurisdictional and dispositional hearings, the court made clear its conclusion that the parents had willfully disobeyed its orders. Substantial evidence supports this conclusion.

When the court initially placed Julien with Jerrod for an extended visit, it conditioned the placement on J.M.'s absence, and cautioned that J.M.'s "coming over there and having dinner or something" would result in Julien's removal. It also expressly told them that while J.M. was to have monitored visits, Jerrod was "not to monitor those

visits.” Both parents indicated their understanding. CSW Lee reviewed the court’s order with both parents.

But on July 25, 2019, the head of the Upward Bound program informed DCFS that on July 21 and again on July 24, 2019, J.M. had “been staying at the shelter.” When DCFS brought this to the court’s attention, J.M.’s counsel claimed the parents believed it would not violate the court order for J.M. to shower in the residential unit, or for her to sleep in the parking structure. In the face of the court’s direct statements about not “coming over there and having dinner or something,” and CSW Lee’s review of the order with the parents, the court was entitled to disbelieve the parents’ claim that they thought showering or sleeping in the parking structure was exempted from its order. We find substantial evidence supports the court’s conclusion that the parents willfully disobeyed its orders.

2. *Substantial Evidence Supports the Court’s Conclusion That the Parents Were Not Cooperating With DCFS*

Though he later expressed remorse for the act, Jerrod’s reaction to DCFS’s arrival to serve a removal order was to jump out of a window, and then tell Julien to do the same. Jerrod and J.M. each missed at least one scheduled appointment with DCFS. Additionally, though Jerrod knew DCFS would be conducting unannounced home visits, during the week of July 29, 2019, Jerrod and Julien spent only one night at Upward Bound, “when they came in at 1:09a.m.” If

Jerrod and Julien were staying at an undisclosed location, DCFS could not stop by on unannounced visits to ensure Jerrod and J.M. were not together.

Finally, six days before the jurisdictional and dispositional hearings, through text and phone calls, Jerrod expressly informed DCFS that he “was not going to participate in any meetings, . . . did not want to deal with DCFS, [and] . . . d[id] not want anyone from DCFS speaking with Julien.”¹³ We find substantial evidence supports the court’s conclusion that the parents were not cooperating with DCFS.

3. *The Parents’ Disobedience and Non-Cooperation Support the Court’s Finding That No Means Short of Removal Would Protect Julien*

Jerrod argues Julien could have been released to him “with the supervision of the Department and the court, while also having in-home services through a family maintenance case plan as an extra level of supervision.” J.M. similarly

¹³ J.M. does not deny Jerrod’s statement, but argues “the Department did not indicate that father actually refused to attend any scheduled meetings or make Julien available for inspection. [Citation.] In fact, the last-minute report did not show that any further meetings or inspections were attempted. [Citation.] Thus, father did not actually refuse to comply with the court’s orders” The argument is, at best, disingenuous. DCFS is not required to schedule a meeting that a parent has categorically stated he will not attend before the court may conclude the parent is not cooperating.

argues “the court could have ordered family preservation services for father and Julien, which would have provided in-home assistance, as well as another layer of supervision over the family. The Department could have continued to make unannounced visits to the home to monitor Julien’s safety. The investigator from the office of Julien’s trial counsel could also have been sent to monitor Julien’s well-being and safety and report to the court.”

But as the evidence above demonstrates, the parents had a history of disobeying court orders and refusing to cooperate with DCFS, even if doing so might result in losing custody of their child. In light of the parents’ demonstrated recalcitrance, the court was justified in concluding that more court orders and more attempts at DCFS supervision would prove ineffectual, and that steps short of removal were inadequate to ensure Julien’s safety.¹⁴

¹⁴ J.M. relies on three cases, all inapposite. *In re Henry V.* (2004) 119 Cal.App.4th 522 is inapplicable because, unlike *Henry V.*, the instant case did not deal with a “single occurrence” of abuse, the parents have not been “fully cooperative in taking advantage of the services that had been offered,” and it is clear the juvenile court made its decision by the requisite “clear and convincing” standard. (*Id.* at 529-530.) *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810 held that the juvenile court erred by not considering “unannounced visits by DCFS, public health nursing services, in-home counseling services and removing Mother from the home” as a way to protect the minor short of removal -- all things the juvenile court here not only considered but had already tried, to no avail. Finally, *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 held that a mother should have been given a
(*Fn. is continued on the next page.*)

DISPOSITION

The court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.

chance to maintain custody with the warning that if she again failed to properly care for the child, she would lose custody -- a chance the court had already given the parents when it placed Julien with Jerrod on an extended stay, while ordering J.M. to stay away on pain of Julien's removal.